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Office of Enforcement  
Compliance & Environmental Justice

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May 8, 2018

**VIA HAND DELIVERY**

U.S. Environmental Protection Agency  
Region 8  
Atten: Mike Rudy (8ENF-RC)  
1595 Wynkoop Street  
Denver, CO 80202-1129

**Re: Response to Request for Information Pursuant to Sections 104(e) of CERCLA for the Illinois Gulch Site, southeast of Breckenridge, in Summit County, Colorado, SSID #A8-88**

Dear Mr. Rudy:

Enclosed is Union Pacific Railroad Company's certified response to EPA's February 22, 2018 Request for Information and Documents. Also enclosed are a disk containing documents responsive to the Request for Information and documents, and a corresponding document index. Please contact me if you have any difficulty accessing the documents.

Sincerely,

Squire Patton Boggs (US) LLP



Carolyn L. McIntosh

Enclosures

cc: Robert C. Bylsma  
Marsha K. Woodard

May 8, 2018

U.S. Environmental Protection Agency  
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Atten: Mike Rudy (8ENF-RC)  
1595 Wynkoop Street  
Denver, CO 80202-1129

**Re: Response to Request for Information Pursuant to Sections 104(e) of CERCLA for the Illinois Gulch Site, southeast of Breckenridge, in Summit County, Colorado, SSID #A8-88**

Dear Mr. Rudy:

Union Pacific Railroad Company ("Union Pacific") provides this response ("Response") to the Request for Information and Documents ("Information Request") dated February 22, 2018 from the United States Environmental Protection Agency ("EPA") and received by Union Pacific via certified mail on February 27, 2018. Pursuant to conversations and e-mails between myself and Douglas Naftz, Attorney with U.S. EPA Region 8, CERCLA/Cost Recovery Unit, EPA granted Union Pacific an extension of time until May 8, 2018 to respond to the Information Request. The Information Request pertains to the Illinois Gulch Site located southeast of Breckenridge, in Summit County, Colorado, SSID #A8-88 (the "Site"). Union Pacific has identified and is producing with this Response, on the enclosed disk, all responsive documents in its possession, custody, or control that have been identified to date and that are not protected by attorney-client, work product, or other privileges or immunities. If Union Pacific identifies any additional responsive, non-privileged documents, Union Pacific will supplement this Response.

#### **Initial Statement**

Union Pacific notes from the outset that it does not currently, nor has it ever, owned property or facilities within the Site. Nor is Union Pacific a corporate successor to any entity that owned or operated property or facilities at the Site.

The Information Request seeks information and documents related to the Illinois Gulch Site and the historic railroads that at one time ran across the Site. Specifically, the Information Request seeks information regarding Union Pacific's connection to the Denver, South Park and Pacific Railroad Company ("DSP&PR") and the Denver, Leadville and Gunnison Railway Company ("DLGR"). Union Pacific has no corporate relationship to either railroad company. Union Pacific

Railway (“UPRy”) was at one time the majority shareholder of the DSP&PR and, later, of the DLGR, which acquired the DSP&PR line when the company became insolvent. However, UPRy is a separate corporate entity from Union Pacific and UPRy no longer exists in any form. UPRy was insolvent, placed in receivership, and sold in piecemeal fashion in several foreclosure sales. Although Union Pacific, a wholly separate corporate entity, purchased a number of rail lines formerly owned by UPRy, Union Pacific did not purchase any of the DSP&PR or DLGR lines and Union Pacific is not a successor to UPRy. Union Pacific did not acquire UPRy’s interest in DLGR and did not exist at the time the DSP&PR/DLGR rail line was constructed. Moreover, in 1898, the line was acquired by the Colorado and Southern Railway (“CSRy”), which was later purchased by the Chicago, Burlington and Quincy Railroad Company (“CBQR”). The CBQR is a predecessor to the Burlington Northern and Santa Fe Railway Company (“BNSF”) and has no corporate affiliation with Union Pacific.

Union Pacific does not own and never has owned any property at the Site. Union Pacific located very few documents responsive to the Information Request questions. The documents Union Pacific is producing herewith are largely publicly available records, all of which Union Pacific identified and obtained from third-party sources in its research to respond to the Information Request.

### **General Objections**

Union Pacific has made a diligent search for responsive information and a good faith effort to respond fully and completely to the Information Request. Nonetheless, Union Pacific respectfully sets forth the following general objections to preserve its rights.

General Objection 1: Union Pacific objects to the Information Request to the extent that it exceeds the authority granted to the EPA under Section 104(e) of CERCLA.

General Objection 2: Union Pacific objects to the Information Request as EPA has not provided any information establishing that Union Pacific has, or ever had, any involvement at the Site or has information relevant to the identification, nature and quantity of materials at the Site, the nature or extent of a release or threatened release at the Site, or the ability of a relevant person to pay for or to perform a cleanup. *See* 42 U.S.C. § 9604(e)(2).

General Objection 3: Union Pacific objects to the overbroad and burdensome nature of the introduction, instructions and definitions of the Information Request, which seek an unwarranted and excessive scope of information and documents from over 130 years ago.

General Objection 4: Union Pacific objects to the relevant time period for the Information Request to the extent the individual requests are not time limited, despite the fact that the historic rail line at/near the Illinois Gulch Site was only operated from 1882 to 1937.

General Objection 5: Union Pacific objects to the Information Request to the extent that it seeks information and documents not within Union Pacific’s possession, custody, and control.

General Objection 6: Union Pacific objects to the Information Request to the extent it seeks information that is publically available or was previously provided to EPA, already available to EPA, or possessed by another government agency.

General Objection 7: Union Pacific objects to the Information Request to the extent that it purports to require Union Pacific to divulge information protected by the attorney-client privilege, the work product protection, or any other applicable privilege or immunity recognized by federal or Colorado state law. However, Union Pacific affirmatively states that it has not withheld any documents or information based upon any privilege or immunity.

General Objection 8: Union Pacific objects to the Information Request to the extent it is vague, ambiguous, immaterial, and/or not reasonably calculated to lead to admissible evidence.

### **Objections to Instructions and Definitions**

In addition to its General Objections, Union Pacific makes the following objections to the Request's Instructions and Definitions and to all questions and requests for copies of documents that use those Instructions and Definitions.

Instruction/Definition Objection 1: Union Pacific objects to the definition of the terms "document" and "documents" to the extent it includes material "known by [Union Pacific] to exist" but not within Union Pacific's possession, custody, or control. Union Pacific has obtained records from public, third-party sources, but had no obligation to do so and has no obligation to provide other publicly available records from third-party sources even if the records are "known to exist".

Instruction/Definition Objection 2: Union Pacific objects to the term "identify" as used in paragraphs 5 through 7 of the Definitions in the Information Request to the extent that these definitions purport to require Union Pacific to provide detailed information concerning entities with which it has no corporate relationship or knowledge, historic documents known to Union Pacific only through research into publicly available historic records, or historic persons identified only through historic documents.

Instruction/Definition Objections 3: Union Pacific objects to the term "you" and "Respondent" to the extent it includes entities that are not corporate predecessors of Union Pacific and for whom Union Pacific is not liable as a corporate successor. Union Pacific responds to the Information Request only on behalf of itself.

### **Responses**

Subject to, and without waiving its general objections, Union Pacific responds as stated below to the RID.

**1. Identify the person(s) answering these questions by providing their name, address and telephone number.**

**RESPONSE 1:**

Robert C. Bylsma  
Sr. Regional Environmental Counsel  
Union Pacific Railroad Company  
10031 Foothills Blvd., Suite 200  
Roseville, CA 95614  
Phone: 916-789-6229  
Fax: 916-789-6227  
Email: [rcbylsma@up.com](mailto:rcbylsma@up.com)

Carolyn L. McIntosh  
Squire Patton Boggs (US) LLP  
1801 California Street, Suite 4900  
Denver, CO 80202  
Phone: 303-894-6127  
Fax: 303-894-9239  
Email: [carolyn.mcintosh@squirepb.com](mailto:carolyn.mcintosh@squirepb.com)

**2. Identify the person(s) whom you wish to receive all further communications from the EPA related to the Site.**

**RESPONSE 2:**

Carolyn L. McIntosh  
Squire Patton Boggs (US) LLP  
1801 California Street, Suite 4900  
Denver, CO 80202  
Phone: 303-894-6127  
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**3. For each and every question contained herein, identify all persons consulted in the preparation of the answer.**

**RESPONSE 3:**

Mr. Gregg A. Larsen  
Real Estate Department  
Union Pacific Railroad Company  
Contact through Carolyn L. McIntosh

Mr. Mark Hamilton  
Engineering Department  
Facilities Tech 2  
Union Pacific Railroad Company  
Contact through Carolyn L. McIntosh

Ms. Kendall Giwoyna  
Map Librarian  
Union Pacific Railroad Company  
Contact through Carolyn L. McIntosh

Ms. Karen M. Belair  
Law Department  
Union Pacific Railroad Company  
Contact through Carolyn L. McIntosh

Ms. Moe F. Hanners  
Manager Contracts - Corporate Law  
Union Pacific Corporation  
Contact through Carolyn L. McIntosh

**4. For each and every question contained herein, identify documents consulted, examined, or referred to in the preparation of the answer, or that contain information responsive to the question, and provide accurate copies of all such documents.**

**RESPONSE 4:**

Subject to and without waiving the forgoing general and specific objections, Union Pacific states that it has identified, by Bates number, documents Union Pacific referred to in the preparation of this Response in the "Index to Documents Produced by Union Pacific Railroad Company, Illinois Gulch Site, SSID #A8-88" ("Index") enclosed with this Response. All of the Bates numbered, referenced documents are also included on the disk enclosed with this Response.

**5. Describe all property interests that UPRR, or its predecessors, currently holds at the Site, or has held in the past, and any maps, surveys, or photographs that identify property held. Identify the person from whom you acquired each interest and provide the date the property interest was acquired. Provide copies of all deeds, leases, or other conveying instruments that contain the above information. If the property interest is no**

**longer held, detail to whom it was transferred (provide contact information) and furnish copies of documentations detailing the transfer.**

#### **SPECIFIC OBJECTIONS TO QUESTION 5:**

In addition to the General Objections, Union Pacific further specifically objects to Question 5 to the extent it seeks information that Union Pacific does not now have and likely never owned, possessed, or controlled. Union Pacific further objects to Question 5 to the extent it purports to require Union Pacific to provide information concerning entities with which it has no corporate relationship or knowledge.

#### **RESPONSE 5:**

Subject to the general and specific objections above, Union Pacific states that Union Pacific does not currently, nor has it ever, owned property or facilities within the Site. Nor is Union Pacific a corporate successor to any entity that owned or operated property or facilities at the Site.

Union Pacific is not a corporate successor to the historic railroads that provided commercial carrier and passenger service to the Site. Union Pacific performed a diligent search for documents within its possession, custody, and control responsive to this question. That search revealed that Union Pacific possess few—and only publicly available—documents related to the Site or the historic railroads that serviced the Site. Specifically, the only information that Union Pacific has is derived from various Poor's Manuals from 1880 through 1910 and other publicly available documents, copies of the relevant portions of which are enclosed in response to other questions. After a diligent search by all relevant departments at Union Pacific (e.g., Real Estate, Operations, and Law), Union Pacific confirms that to the best of its knowledge, it does not currently, nor has it ever, owned any property within the Site. Further, after its diligent search, Union Pacific confirms that to the best of its knowledge, Union Pacific does not own, possess or control any maps, surveys, deeds, leases, or other conveying instruments, or photographs of property within the Site.

**6. Describe the relationship among UPRR; Denver, South Park and Pacific Railroad; and Denver, Leadville and Gunnison Railway Company, as it relates to the Site. Provide copies of all documents related to each relationship including, but not limited to, merger agreements, purchase agreements, property transfer documents and assumptions of liability.**

#### **SPECIFIC OBJECTIONS TO QUESTION 6:**

In addition to the General Objections, Union Pacific objects to Question 6 to the extent it purports to require Union Pacific to provide information concerning entities with which it has no corporate relationship or knowledge or to provide documents that are not within its possession or control but that are publicly available.

**RESPONSE 6:**

Subject to the above general and specific objections, Union Pacific states that it has no relationship to the DSP&PR or the DLGR. Neither company is a corporate predecessor nor, to Union Pacific's knowledge, has any corporate relationship to Union Pacific.

Although the Union Pacific Railway Company ("UPRy") at one time was the majority shareholder of the DSP&PR, whose rail line was later acquired by DLGR, UPRy is not a predecessor to Union Pacific and UPRy no longer exists in any form. UPRy was the majority shareholder of the DSP&PR from 1881 to 1889 and a shareholder of DLGR from 1889 to 1893, during construction and early operation of the rail line. By 1893, UPRy was insolvent, placed in receivership, and sold in piecemeal fashion in several foreclosure sales. DLGR (the former DSP&PR) was also insolvent, went into a separate receivership, and its assets were the subject of a foreclosure sale separate from the UPRy mainline. Union Pacific is not a successor to UPRy, Union Pacific did not exist at the time the Denver, South Park and Pacific rail line was constructed, and did not acquire any of the DSP&PR assets at any foreclosure sale or otherwise.

Union Pacific provides the following summary regarding the DSP&PR/DLGR rail lines, and the distinction between UPRy and Union Pacific. The documents relied on in the below summary, or excerpts thereof, are included in Union Pacific's document production on the enclosed disk and identified on the Index.

**A. The History of the DSP&PR/DLGR<sup>1</sup>**

DSP&PR was chartered on June 14, 1873 and the first section opened July 1, 1874. Henry V. Poor, *Manual of the Railroads of the United States*, 960 (1880). The rail line was conceived of and initially funded by Denver business leaders seeking a competitive route westward through the Rocky Mountains. R.H. Kindig, E.J. Haley, M.C. Poor, *Pictorial Supplement to Denver South Park and Pacific*, 20 (1959) (excerpt). Grading of the section from Como to Dickey, through Boreas Pass and Breckenridge, began in 1881. Robert M. Ormes, *Railroads and the Rockies: a Record of Lines in and near Colorado*, 237 (1963). That segment was completed in December of 1882. *Id.* The completed DSP&PR line extended from Denver to Leadville, Colorado, with branch lines from Como to Baldwin Mine, Dickey to Keystone, Garos to London Junction, Sheridan to Morrison, Como to Lower Mines, Schwanders to Buena Vista, and Castleton up Ohio Creek. Henry v. Poor, *Manual of Railroads of the United States*, 887 (1889). In total, the rail line encompassed 324.12 miles of railroad. *Id.* In 1881, UPRy "came into control [of DSP&PR] by purchase of stock." *Id.*

In 1888, DSP&PR defaulted on its mortgage. *Id.* The company was foreclosed on. A new company, DLGR, which was incorporated July 6, 1889, purchased the rail line assets of DSP&PR on August 29, 1889. Henry V. Poor, *Manual of the Railroads of the United States*, 846 (1893); *Colorado and Southern Ry. CO. Abandonment, Report of the Commission*, Finance Docket No. 7132, Decisions of the Interstate Commerce Commission June – Dec. 1930, Vol. 166 at 475 (June 2, 1930) (hereinafter, the

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<sup>1</sup> Union Pacific notes that all of the records it relies on herein are publicly available. Additional resources are available at research libraries, such as at the Colorado Railroad Museum. Further, information regarding the final disposition of the rail properties post-abandonment is likely available at the office of the Summit County Clerk and Recorder.

“1930 Abandonment Decision”). UPRy owned the entire capital stock of the new company. *Manual of Railroads of the United States*, 887 (1889).

In 1893, UPRy was placed in receivership, with five receivers appointed over different segments of the railway. Nelson Trottman, *History of the Union Pacific: A Financial and Economic Survey*, 250 (1923). “During the receivership, parts of the system from time to time became separated from the parent company, in some cases only temporarily, in other cases permanently.” *Id.* The DLGR line was also declared bankrupt, placed in the hands of a separate receiver, and was permanently separated from the UPRy system. *Pictorial Supplement to Denver South Park and Pacific* at 20.

The DLGR line was operated by the receiver until the Colorado and Southern Railway Company acquired the property of DLGR in a foreclosure sale in 1898. *Pictorial Supplement to Denver South Park and Pacific* at 20. The sale was confirmed on November 21, 1898 and CSRy took possession on Jan. 11, 1899. Annual Report to the Stockholders of the Colorado & Southern Railway Company for the Fiscal Year Ended June 30, 1900, 3 (1900). During its operation under receivership, in 1895 and 1896, the DLGR receiver constructed two additional branch lines. Thus, the total mileage of the DLGR acquired by the CSRy was 336.56 miles. 1930 Abandonment Decision at 474. On December 21, 1908, the CBQR purchased a controlling interest in the common stock of CSRy. *Poor’s Manual of Railroads of the United States*, 730, 963 (1910).

CSRy discontinued service between Como and Breckenridge over Boreas Pass in late 1910 or early 1911. *Pictorial Supplement to Denver South Park and Pacific* at 22. However, “[d]etermined action by the Breckenridge Chamber of Commerce and other interested parties, with eventual recourse to legal action, finally forced [CSRy] to resume service over Boreas Pass in January, 1913.” *Id.* Two years later, CSRy filed an application with the Interstate Commerce Commission (“ICC”) to abandon the entire Denver Leadville line, but the ICC denied the application. *Id.*

On September 22, 1928, CSRy filed another application to abandon a large portion of the line once owned by DSP&PR and DLGR, including that portion of the line that ran between Dickey and Dillon, through Breckenridge. 1930 Abandonment Decision at 471-72. CSRy sought to abandon:

- (a) That part of its Denver-Leadville narrow-gage line extending from Waterton, Jefferson County, southwestward and westward through Jefferson and Douglas Counties, to Como, Park County; thence northwestward to Dickey, Summit County, and thence southwestward through Summit and Lake Counties to Leadville, a total of 131.67 miles, together with the following branch liens connecting therewith; (b) all of its 3-rail branch line in Lake County extending from Leadville southeastward to Blind Tom mine, 2.44 miles (c) all of its narrow-gage branch line in Summit County extending from Dickey northward to Dillon and thence eastward to Keystone, a total distance of 6.84 miles; (d) all of its narrow-gage branch line in Summit County extending from Kokomo northwestward to Wifley’s Mill, 1.1 miles; (e) all of its narrow-gage branch line in Park County extending from Como southward to Garos and thence westward through Fairplay to Alma, a total distance of 31.67 miles; and (f) all of its narrow-gage branch line in Park County extending from Hill Top Junction southwestward to Leavick, 11.33 miles.

*Id.* The aggregate length of the line to be abandoned was 185.05 miles. *Id.* Though the railroad's existing operations resulted in continuing losses, on June 2, 1930, the ICC denied the application for abandonment, citing the showing by communities and industries served by the railroad regarding future prospects of increased traffic for the railroad. *Id.* at 492. However, the ICC held that CSRy could reapply for abandonment in 36 months, if it could demonstrate that circumstances had not materially improved. *Id.*

The CSRy filed a petition on August 16, 1935 “(a) to reopen the case, (b) to amend its application in the previous proceeding by excluding therefrom its request for permission to abandon the western portion of its Denver-Leadville line between Leadville and Climax, 14.83 miles, and (c) to renew the application as amended.” *Colorado and Southern Ry. CO. Abandonment, Report of the Commission on Further Hearing*, Finance Docket No. 7132, Decisions of the Interstate Commerce Commission June 1936 – Jan. 1937, Vol. 217 at 367 (Oct. 12, 1936) (hereinafter, the “1936 Abandonment Decision”). With the amendment, the length of the line to be abandoned was 170.22 miles. *Id.* After rehearing, the ICC approved abandonment of the line on October 12, 1936, holding that neither the present nor the prospective volume of traffic on the line was sufficient to warrant its retention. *Id.* at 382. Thus, the entire 170.22 miles of rail line were abandoned, including the narrow-gauge line from Como to Dickey that ran through Breckenridge. *Id.*

The last train left Denver Union Station for Leadville on Friday, April 9, 1937 and the final passenger run from Leadville to Denver was made the next day. *Pictorial Supplement to Denver South Park and Pacific* at 24. The line was dismantled in 1938, with all of the rails, including branch lines, between Climax and South Platte removed by October 1938. *Id.* The final narrow gauge track between South Platte and Denver was removed in 1941 and 1942. *Id.* After the 1936 abandonment, only the 14-mile stretch of track from Leadville to Climax remained. This segment was eventually converted to standard gauge, and the last train ran on the narrow gauge line between Leadville and Climax on Aug. 25, 1943.<sup>2</sup> *Id.*

Long after the abandonment and dismantling of the Denver to Leadville line, CBQR, Great Northern Railway, Northern Pacific Railroad, and the Pacific Coast Railroad merged on March 2, 1970 to form the Burlington Northern Railroad, which became the stockholder of the majority of CSRy stock. *Hearing Before the Committee on the Judiciary United States Senate Ninety-Seventh Congress Second Session on Rail Mergers and Formation of the Burlington Northern Holding Company*, 587 (Mar. 26, 1982) (Appendix containing a June 5, 1981 ICC decision, Finance Dockets 28583 and 21478); *see also* Great Northern Pacific & Burlington Lines, Inc. – Merger, Etc. – Great Northern Railway Company, et al., Finance Docket No. 21478 (Nov. 30, 1967) (approving the merger to form Burlington Northern). Then, on December 31, 1981, CSRy merged into Burlington Northern Railroad. *Hearing Before the Committee on the Judiciary United States Senate Ninety-Seventh Congress Second Session on Rail Mergers and Formation of the Burlington Northern Holding Company* at 188. At the time of the merger, Burlington

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<sup>2</sup> The standard gauge line between Leadville and Climax continued to operate under CSRy and, eventually Burlington Northern until 1988 when the line was sold to Leadville-Climax Shortline Railway Company. *See* 53 Fed. Reg. 809, 809-810 (Jan. 13, 1988) (notice by Leadville-Climax Shortline Railway of acquisition and operation exemption). Thereafter the line was utilized primarily for tourist excursions.

Northern owned 92.57% of all outstanding stock in CSRy. *Id.* Union Pacific has no corporate relationship with the Burlington Northern.

**B. Union Pacific is not a Corporate Successor to UPRy.**

The first railroad company called “The Union Pacific Railroad Company” was created by 1862 and 1864 Acts of Congress and substantially funded through public debt to construct a transcontinental railroad (referred to as the “Land Grant UP”). S. Rep. No. 830 at 7-8, 22-23 (1895); 12 Stat. 489 (1862); 13 Stat. 356 (1864). “The project of building the road was not conceived for private ends; and the prevalent opinion was, that it could not be worked out by private capital alone. It was a national work, originating in national necessities, and requiring national assistance.” *United States v. Union Pac. R.R. Co.*, 91 U.S. 72, 81 (1875). The Congressional charter provided for four specific railroad lines: (1) “one grand trunk line of railroad,” from the Missouri River to California; (2) one line from Kansas City to join the trunk line; (3) one line from St. Joseph via Atchison, Missouri; and (4) an “Iowa” branch from Sioux City. *Id.* at 3; *see also History of the Union Pacific: A Financial and Economic Survey* at 250 n.12.

It was the intent of Congress that “these lines should be operated as one continuous line . . . to collectively constitute one grand transcontinental system of roads uniting the Pacific coast to the East.” S. Rep. No. 830 at 9. The Congressional charter did not include branch lines, so all additions were made through subsidiary entities. *Id.*; *see also History of the Union Pacific: A Financial and Economic Survey* at 250 n.12.

Within a decade, responding to concerns that Land Grant UP would be unable to pay its government debt at maturity, on January 24, 1880 the UPRy was formed by a consolidation of the Land Grant UP with the Kansas Pacific Railway Company, and the Denver Pacific Railway and Telegraph Company. S. Rep. No. 830 at 18-19. Nonetheless, on October 13, 1893, the UPRy and many of the auxiliary companies went in to receivership. S. Rep. No. 830 at 21, 57; H.V. & H.W. Poor, *Poor’s Manual Railroads of the United States* 557 (1902). Five receivers were appointed, including three to protect the United States’ interests. S. Rep. No. 830 at 10, 21; Letter from the Attorney General Transmitting Information Relative to the Union Pacific Railway Company, 2-3 (Apr. 17, 1894).

One objective of the receivership was to avoid a breakup of UPRy’s transcontinental rail system. Letter from the Attorney General at 27 (“to preserve the unity of said system . . . and prevent[ ] the disruption thereof by separate executions . . .”); *History of the Union Pacific: A Financial and Economic Survey* at 250. Nonetheless, the system was dismembered, lines and auxiliary corporations were broken off, and separate receivers and foreclosure sales occurred. *History of the Union Pacific: A Financial and Economic Survey* at 261; S. Rep. No. 830 at 57. The breakups shrunk the former UPRy system “from about 8,000 miles in 1893 to less than 5,000 miles in 1894.” *History of the Union Pacific: A Financial and Economic Survey* at 252.

Notably, the former DSP&PR/DLGR lines were among those that were separated from the UPRy System. In 1894, a separate receiver was appointed for the DLGR. The receiver operated the lines wholly separately from the UPRy receivership and operations until the DLGR lines were acquired by the CSRy in 1898. *Pictorial Supplement to Denver South Park and Pacific* at 20.

When UPRy went into receivership, 49% of its debt was owed to the United States, resulting in intense national scrutiny. S. Rep. No. 830 at 21-22. Repayment and termination of the “partnership” with the United States “engaged the attention of all branches of the Government . . . [and was] almost constantly before Congress since 1878 . . .” *Id.* at 1. To that end, various assets of the former UPRy were sold at multiple, separate, public auction foreclosure sales, to pay off and resolve the government debt. H.V. & H.W. Poor, *Poor’s Manual of the Railroads of the United States*, 844 (1898). *History of the Union Pacific: A Financial and Economic Survey* at 268-72; Report of the Government directors of the Union Pacific Railway to the secretary of the Interior, 6 (1897) (setting a minimum bid for the Kansas Pacific properties to satisfy UPRy’s debt to the Government).

Led by Mr. E. H. Harriman (who was not affiliated with UPRy), a new company, the Union Pacific Railroad Company, was formed in Utah under the laws of the State of Utah (not by Congressional Act), on July 1, 1897 for the purpose of acquiring productive property of the former UPRy. Articles of Association for the Union Pacific Railroad Company (1897); *Poor’s Manual of the Railroads of the United States*, at 844 (1898); *History of the Union Pacific: A Financial and Economic Survey* at 268; Klein, Maury, *Union Pacific—The Rebirth 1894-1969* (1989), at 28. The new Union Pacific expressly disavowed the liabilities of UPRy: “This corporation does not assume and shall not be liable for the debts, obligations or liabilities of the Union Pacific Railway Company or of any corporation or company whose powers, rights, privileges, railroads and franchises it shall purchase or acquire.” Articles of Association for the Union Pacific Railroad Company at 9. The new company had fifteen directors—none of them representing the United States government. Articles of Association of the Union Pacific Railroad Company at 5. Eleven of the fifteen board members were new (had not been on the UPRy board), including the new member and chairman of the executive committee, Mr. E. H. Harriman. *Id.*

The new Union Pacific bought certain assets of the former UPRy, consisting of the mainline from Omaha, Nebraska to Ogden, Utah, at a public auction foreclosure sale on November 1, 1897. Report of Government Directors of the Union Pacific Railway to the Secretary of the Interior for the Fiscal Year ended June 30, 1898 (September 30, 1898), at 3-4; Special Master’s Deed, William D. Cornish, Special Master to Union Pacific Railroad Company (Jan. 22, 1898); *Order, Dexter, et al. v. Union Pacific Railway Co.*, Circuit Court of the United States, District of Nebraska (Jan. 31, 1898). Through this and a subsequent public auction foreclosure sale on February 16-18, 1898, the government debt was satisfied and the United States never had any financial interest in the Union Pacific. *History of the Union Pacific: A Financial and Economic Survey* at 268-72. And, certain of the former UPRy lines, including those in Colorado and specifically, the former DSP&PR lines, were never acquired by Union Pacific. *Id.* at 275-80.

Union Pacific expressly disavowed the liabilities of UPRy. Articles of Association for the Union Pacific Railroad Company at 7. Consistent with the equity receivership and foreclosure process common at the time, Union Pacific as the new company “took the property of the old, free of all the latter’s debts which were junior to the foreclosed mortgages.” Warner Fuller, *The Background and Techniques of Equity and Bankruptcy Railroad Reorganizations—A Survey*, 7 L. & Contemp. Probs. 377 at 382 (1940).

As noted above, Union Pacific did not purchase UPRy's interest in the former DSP&PR lines, and the line was instead acquired by CSRY, a BNSF predecessor. Union Pacific's purchase of other UPRy assets does not make Union Pacific a successor to UPRy.

**7. Describe UPRR and its predecessors' activities and operations at the Site, including the following, and provide copies of all documents relating to such activities and/or operations:**

- a. A description of the operations conducted at the Site;
- b. A description of the facilities related to each operation and a description of where the facilities were located;
- c. The dates each facility operated;
- d. The function performed or product produced by each facility;
- e. Any changes UPRR or its predecessors made to the Site, including any demolition, removal or improvements;
- f. The activities taken upon cessation of operations at the Site;
- g. The date UPRR or any predecessor transferred all or a portion of the Site, and the entity to which the Site was transferred.

#### **SPECIFIC OBJECTIONS TO QUESTION 7:**

In addition to the General Objections, Union Pacific further specifically objects to Question 7 to the extent that it purports to require Union Pacific to provide information concerning entities with which it has no corporate relationship or knowledge.

#### **RESPONSE 7:**

Subject to the general and specific objections above, Union Pacific directs you to the response to Question 6 above. Neither Union Pacific nor its predecessors ever had any activities or operations at the Site.

**8. Describe and, where available, provide maps, drawings, photographs, and/or other images that depict the physical characteristics of the Site, including, but not limited to, the following:**

- a. Surface structures and equipment (e.g., buildings, ore bins, tanks, etc.);
- b. Roads;
- c. Right-of-ways;
- d. Railroad stations (including loading/unloading stations);
- e. Railroad tracks or trackage (identify where and when the main and spur track were constructed);
- f. Railroad tunnels;
- g. Railroad roadways and aerial trams; and
- h. Railroad embankments.

**SPECIFIC OBJECTION TO QUESTION 8:**

In addition to the General Objections, Union Pacific specifically objects to Question 8 to the extent that it purports to require Union Pacific to provide information concerning entities with which it has no corporate relationship or knowledge. Union Pacific further objects to Question 8 to the extent it purports to require Union Pacific to provide information already in the possession or control of EPA or information that is publically available.

**RESPONSE 8:**

Subject to the general and specific objections above Union Pacific states that it has no direct knowledge of the physical characteristics of the Site, as Union Pacific never owned property or operated at the Site. Union Pacific has no responsive documents or information and, to the best of its knowledge, has not ever had any documents or information responsive to Question 8. Nonetheless, Union Pacific researched the Site in preparation for this Response and in doing so located descriptions, maps, drawings or photographs of the Site from third-party sources, Union Pacific includes those identified third-party documents in its document production and Index.

**9. Provide any additional information or documents you may have which may shed light in regard to other owners or operators (i.e., other railroad companies or mining companies) at the Site, including, but not limited to, the nature of their current or past mining operations and interests at the Site.**

**SPECIFIC OBJECTION TO QUESTION 9:**

In addition to the General Objections, Union Pacific further specifically objects to Question 9 to the extent that it purports to require Union Pacific to provide information concerning entities with which it has no corporate relationship or knowledge. Union Pacific further objects to Question 9 to the extent it purports to require Union Pacific to provide information already in the possession or control of EPA or information that is publically available. Union Pacific further objects to Question 9 to the extent that the reference to “other owners or operators” implies that Union Pacific is an owner or operator at the Site; Union Pacific is not and has never been an owner or operator at the Site.

**RESPONSE 9:**

Subject to the general and specific objections above, Union Pacific directs you to the response to Question 6 above regarding the history of the rail line originally constructed by the DSP&PR. Union Pacific has no additional information in its possession. To the extent that any maps or other information may exist, since CSRY is a predecessor of BNSF, BNSF may have that information.

**10. Describe and provide any information you have regarding any mining activities at the Site. Include any boring activities, boring logs, mining, milling or smelting activities, ore production records, processing or reprocessing contracts and records of wastes produced from milling, mining or smelting activities at the Site. Provide copies of**

**the mine plans and maps and process flow sheets used at any and all mines, mills, or smelters at the Site.**

**SPECIFIC OBJECTION TO QUESTION 10:**

In addition to the General Objections, Union Pacific further specifically objects to Question 10 to the extent that it purports to require Union Pacific to provide information concerning entities with which it has no corporate relationship or knowledge. Union Pacific further objects to Question 10 to the extent it purports to require Union Pacific to provide information already in the possession or control of EPA or information that is publically available.

**RESPONSE 10:**

Subject to the general and specific objections above, Union Pacific states that it has no responsive documents or information regarding mining activities at the Site and, to the best of its knowledge, has not ever had any documents or information responsive to Question 10.

**11. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any question contained herein or who may be able to provide additional responsive documents, identify such persons and the additional information or documents that they may have.**

**SPECIFIC OBJECTION TO QUESTION 11:**

In addition to the General Objections, Union Pacific further specifically objects to Question 11 to the extent that it purports to require Union Pacific to provide information not in its possession, custody or control.

**RESPONSE 11:**

Subject to the general and specific objections above, Union Pacific states that it is unaware of another person able to provide a more detailed or complete response to the questions contained in the Information Request other than BNSF.

Sincerely,

Squire Patton Boggs (US) LLP



Carolyn L. McIntosh

Enclosure

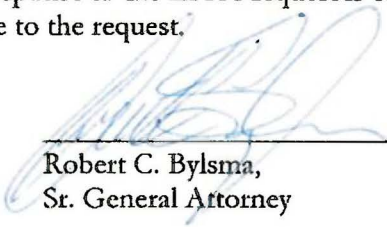
### NOTARIZED CERTIFICATE

I, Robert C. Bylsma, having been duly sworn and being of legal age, hereby state:

1. I am the person authorized by UPRR to respond to the Environmental Protection Agency's request for information concerning the Illinois Gulch Site, Summit County, Colorado, SSID #A8-88

2. I have made a complete and thorough review of all documents, information, and sources relevant to the request.

3. I hereby certify that the attached response to the EPA's request is complete and contains all information and documents responsive to the request.

  
Robert C. Bylsma,  
Sr. General Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

(SEAL)

State of California     )  
County of Placer     )

Subscribed and sworn to me this 8 day of May, 2018, by Robert C. Bylsma, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Notary Public

My Commission Expires May 8, 2021

My address is 10081 Feather Hills Blvd

Roseville CA 95747



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6	06/30/1918	The Colorado and Southern Railway Genesis	UPRRIG-000251— UPRRIG-000255
6	1923	Nelson Trottman, History of the Union Pacific: A Financial and Economic Survey	UPRRIG-000256— UPRRIG-000298
6	04/18/1938	Miller v. Climax Molybdenum Co., 1938 U.S. App. LEXIS 3470 (10th Cir. Apr. 18, 1938)	UPRRIG-000299— UPRRIG-000302

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